

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DEVIN WARREN SIZEMORE,

Defendant.

Case No. 6:21-cr-00138-RAW-1

**EIGHTH MOTION IN LIMINE**

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Defendant Devin Sizemore, by and through his assigned counsel, and pursuant to Local Criminal Rule 12.1(E), moves this Court for an order precluding the government from introducing or eliciting emotional witness reaction concerning the discovery and rescue attempts of Emily Sizemore.

Although the government has not yet informed defense counsel that it intends to introduce or elicit such evidence at trial, Defendant files this motion early out of an abundance of caution to inform the Court that the admissibility of this evidence will likely be an issue at trial.

For example, near the conclusion of the body camera recording of Officer Jack Suter, he can be heard crying uncontrollably concerning the discovery of Emily Sizemore. This portion of his recording, and other

emotional reactions like it, should be redacted because it may invite the jury “into declaring guilt on a ground different from proof specific to the offense charged.” *Old Chief v. United States*, 519 U.S. 172, 180 (1997).

February 21, 2022

Respectfully submitted,

/s/

Lisa A. Peebles  
Federal Public Defender  
4 Clinton Square, 3<sup>rd</sup> Floor  
Syracuse, NY 13202  
(315) 701-0080  
[Lisa\\_Peebles@fd.org](mailto:Lisa_Peebles@fd.org)

### **Certificate of Electronic Filing and Service**

This is to certify that on this 21<sup>st</sup> day of February, 2022, I caused the foregoing instrument to be filed with the Clerk of the Court using the ECF System for filing, with electronic service to be made via CM/ECF to Rebecca Dunnan, AUSA, and to all counsel of record. To counsel's knowledge, there are no non-ECF registrants who are counsel in this case.

/s/

Lisa A. Peebles  
Federal Public Defender